

Experts fear a European 'right to be forgotten' online ruling may be duplicated in Australia

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Civil libertarians, academics, and legal experts have expressed concern the "right to be forgotten" online may be duplicated in Australia after a court ruled European citizens could stop Google linking to items deemed inadequate, irrelevant or excessive.

In March, the European Court of Justice ruled in favour of Spaniard Mario Costeja Gonzalez's demands that [Google remove information from search results](#) deemed to infringe on his privacy and be no longer relevant.

The decision created a precedent known as the "[right to be forgotten](#)", and in the eight months since more than 145,000 people have asked Google for almost 500,000 links to be removed. That is more than 1000 requests a day.

Dr Katina Michael, an associate professor at the University of Wollongong's school of information system, said Google Australia was not immune to the pressure and was under considerable pressure to respond to removal requests.

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"There is certainly a chance that the ECJ's ruling will be adopted here in Australia if enforced by the Australian Privacy Commissioner," she said.

Sophie Bradshaw, special council at law firm Corrs Chambers Westgarth, said she had observed an increase of 'right to be deleted' requests since the March reforms.

"Individuals want the organisation to remove all records of them, including archived data, data collected through cookies and any other interactions between the individual and the organisation," she said.

Earlier this year, the Australian Law Reform Commission recommended Australia adopt the [right to be deleted](#), which would enable people to compel organisations to delete or de-identify information held about them, even if it was collected legitimately.

"It remains to be seen whether the recommendation will be enforced in Australia, but that should not stop individuals from approaching Google if they are concerned about content online that breaches their privacy," said Dr Michael.

Civil Liberties Australia vice president Tim Vines said the European model was a worthwhile experiment but had concerns about how it was being implemented and any potential duplication in Australia.

"The decision whether to delist an entry from a search engine falls to the company itself, with little or no scope for appeal [and] this is not just an applicant's problem, but is also a problem for the company too, which has no independent forum to challenge or test any overly broad request," he said.

He said there was little guidance for companies on how to weigh the competing values of freedom of speech and expression and privacy, and there was a risk that the process will lack transparency and consistency.

Mr Vines said he was concerned a right to be forgotten could be used to selectively correct the public record by having negative reviews or reporting delisted.

"A right to be forgotten should not be seen as a 'right to hide my faults'," he said.

Simon Breheny, the director of the Institute of Public Affairs' Freedom Watch, said the European experience had shown this was a possible side effect of the law.

"A number of requests have been made by businesses seeking to remove negative reviews from various rating sites and this is entirely inappropriate and undermines the proper functioning of the free market," he said.

"People need to understand that they need to take responsibility for their own privacy as no one else is going to protect it for them."

Dr David Glance, Director of the Centre for Software Practice at the University of Western Australia, expressed concern about a "right to be forgotten" in Australia.

"How this law has been implemented in Europe hasn't in many cases affected the original content that was posted about someone but just the pointers to it through search - and so this is an important consideration in how this type of law gets implemented elsewhere," he said.

"The issue is really the fact that enacting the law is unworkable and leaves the decisions in the hands of companies.

"On the other hand, search is always in the hands of companies and the results we see are a result of their decisions on what we should see."

Dr Glance said removing search items from Google was not necessarily a violation of freedom of speech because it was still possible to access the content online.

"Of course, removing search results does hamper discoverability, but it doesn't entirely defeat it because sites are now calling attention to the removed links and creating new results that would then have to be subject to requests for removal," he said.

Dr Michael said it was important not to confuse freedom of speech with the right to privacy as they were "two different things".

"Journalists in credible newspapers need to continue with their investigative reporting but this has [nothing] to do with whether a citizen who is going about their everyday life has had their privacy breached by comments online in a malicious way," she said.

"The internet might be changing the way we do things, but I don't buy the argument that says our privacy is dead anyway so we can now do and say whatever we want about other people."

The European precedent has enabled an ex-Wall Street banker to force Google to [remove links to reporting by BBC economic editor Robert Peston](#) who was critical of practices at Merrill Lynch, one of America's largest investment banks.

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